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RECORDATION NO.

Filed & Recorded

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SUBLEASE OF RAILROAD EQUIPMENT

INTERSTATE COMMERCE COMMISSION

Dated as of November 1, 1974

between

BURLINGTON NORTHERN INC.

as Lessee

and

WEHCO LEASING COMPANY

as Lessor

SUBLEASE OF RAILROAD EQUIPMENT, dated as of November 1, 1974, between WEHCO LEASING COMPANY (hereinafter sometimes called the Lessor or WEHCO), and BURLINGTON NORTHERN INC. (hereinafter called the Lessee).

WHEREAS, THE COLORADO AND SOUTHERN RAILWAY COMPANY (hereinafter called C&S), has entered into an Equipment Trust Agreement dated as of November 1, 1974 (hereinafter called the Trust), with COLORADO NATIONAL BANK OF DENVER (hereinafter called the Trustee), wherein the Trustee has agreed to acquire and Lease to the C&S the railroad equipment described in Schedule A hereto;

WHEREAS, the C&S has leased all the units of said equipment, or such lesser number (hereinafter called the Units) as are delivered and accepted and settled for under the Trust, at the rentals and for the terms and upon the conditions provided for in said Lease (hereinafter called the First Lease) to WEHCO; and

WHEREAS, the Lessor has agreed to sublease the units to the Lessee at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder, subject to all the rights and remedies of the Trustee under the Trust:

Section 1. Delivery and Acceptance of Units. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the First Lease and simultaneously therewith. Upon such delivery, the Lessee will cause an inspector of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery), stating the such Unit has been inspected and accepted on behalf of the Lessee on the date of such Certificate of Delivery and is marked in accordance with Section 4 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

Section 2. Rental. Lessor agrees to lease to Lessee and Lessee hereby leases from Lessor each Unit for sublease to and use upon the lines of railroad owned or operated by the Lessee either alone or jointly with another and whether under lease or otherwise, and upon the lines of railroad owned or operated by any railroad company controlled by or under common control with the Lessee, or over which

the Lessee has trackage rights, and also upon connecting and other railroads in the usual interchange of traffic upon and subject to the terms and conditions hereinafter set forth. The Lessee agrees to pay to the Lessor or to such other person as the Lessor directs as rental for each Unit subject to this Lease 30 consecutive semiannual rental payments each such payment in an amount equal to \$960,038 of the Cost (as defined in the Trust) in immediately available funds each payable on November 1 and May 1 in each year, commencing May 1, 1975.

The Lessor irrevocably instructs the Lessee to make all payments provided for in this Lease other than payments due pursuant to Section 15 hereof in Federal funds (including but not limited to the payments required under Section 6 hereof).

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease, the Trustee, the C&S, or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession of loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

Section 3. Term of Lease. The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of Section 6 and 9 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, are subject to the rights of the Trustee under the Trust and of the C&S under the First Lease.

Section 4. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, the following words in letters not less than one inch in height:

**"OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20c."**

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's, Trustee's and C&S's respective interests in such Unit and the rights of the Lessor under this Lease, of the C&S under the First Lease and of the Trustee under the Trust. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace promptly any such name and words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Trustee, the C&S and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease, the First Lease and the Trust shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may allow the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

Section 5. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the C&S, and the Lessor from collection or other charges and will be free of expense to the C&S and the Lessor with respect to the amount of any local, state, federal, or foreign taxes (other than (i) any United States Federal income taxes and excess profits taxes

payable by the C&S and the Lessor in consequence of the receipt of payments provided for herein, (ii) the net cumulative aggregate amount of all state and local income taxes, franchise taxes, excess profits taxes and similar taxes measured by net income based on the receipt of payments provided for herein, up to the net cumulative amount of such taxes measured by net income based on such receipts which would be payable by the C&S and the Lessor to the state, city and county where the C&S and the Lessor have their principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title or interest under the terms hereof or the Trust, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the C&S and the Lessor solely by reason of its ownership thereof or interest therein and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title or interest of the C&S and the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the C&S and the Lessor, adversely affect the title, property or rights of the C&S and the Lessor hereunder or under the Trust. If any impositions shall have been charged or levied against the C&S and the Lessor directly and paid by the C&S and the Lessor, the Lessee shall reimburse the C&S and the Lessor on presentation of an invoice therefor; provided, however, that the Lessee shall not be obligated to reimburse the C&S and the Lessor for any impositions so paid unless the C&S and the Lessor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the C&S and the Lessor) or unless the Lessee shall have approved the payment thereof.

In the event that the Lessor shall become obligated to make any payment to the C&S or otherwise pursuant to Section 5 of the First Lease not covered by the foregoing paragraph of this Section 5, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Section 5.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor, the Trustee and the C&S in such Units or notify the Lessor, the Trustee and the C&S of such requirement and make such reports in such manner as shall be satisfactory to the Lessor, the Trustee and the C&S.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this Section 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

Section 6. Payment for Casualty Occurrences; Insurance. In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the reasonable opinion of the Lessee, irreparably damaged from any cause whatsoever, or taken or requisitioned by condemnation or otherwise for a definite period exceeding the otherwise then remaining term of this Lease (such an occurrence being hereinafter called a Casualty Occurrence) during the term of this Lease, the Lessee shall promptly and fully notify the Lessor, the Trustee and the C&S with respect thereto and shall pay to the Lessor or to such other person as the Lessor directs an amount equal to the cost thereof less an amount representing depreciation on such Unit arising from reasonable wear and tear to be determined by the method in use at the time in standard railroad practice for determining such depreciation (but in no event exceeding 1/15th of the cost thereof per annum). Upon the making of such payment (hereinafter called the Casualty Value) by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and the Lessee shall be entitled to recover possession of such Unit.

Except as hereinabove in this Section 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

Upon payment of the Casualty Value of such Unit, the title to such Unit, subject to the rights of the Trustee under the Trust, shall pass to and vest in the Lessee.

Any moneys paid to the Lessor, or such other person as directed by the Lessor, pursuant to this Section 6 shall be received and held pending delivery of additional Units. Upon the filing with it of a certificate executed by a Vice President of the Lessee specifying the kind and number of Units to be purchased, such moneys shall be applied by the recipient thereof to the purchase of such Units upon the receipt of the following:

(a) A certificate of a Vice President stating (i) that the Units described and specified therein by number or numbers has been delivered to the Lessee and has been plated or marked in accordance with the provisions of Section 4 hereof; (ii) that such Units are new standard-gauge railroad equipment, other than passenger equipment or work equipment of types other than locomotives; (iii) that the Cost of such Units, determined as provided herein, is an amount as therein specified;

(b) An invoice or invoices from the vendor or vendors of the Units and a bill or bills of sale thereof from said vendor or vendors to the Trustee, which bill or bills of sale shall contain a warranty or guaranty to the Trustee that the title to the Units described therein is free from all liens and encumbrances;

(c) An opinion of counsel that such bill or bills of sale are valid and effective, either alone or in connection with any other instrument referred to in such opinion, to vest in the Trustee title to such Units free from all liens, security interests and encumbrances; and

(d) In case of any Units not specifically described herein, an opinion of counsel that a proper supplement hereto in respect of such Units has been duly executed by the Lessee and duly filed and recorded in accordance with Section 14 hereof.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event comparable to those insured against by the Lessee on equipment owned by it and the benefits thereof shall be payable to the Trustee so long as the indebtedness, if any, evidenced by the Trust shall not have been paid in full, and thereafter to the Lessor and the Lessee as their interests may appear. Any net insurance proceeds as the result of insurance carried by the Lessee received by the Lessor in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this Section 6. If the Lessor shall receive any such net insurance proceeds or condemnation payments after the Lessee shall have made payments pursuant to this Section 6 without deduction for such net insurance proceeds or such condemnation payments, the Lessor shall pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds shall remain the property of the Lessor.

In the event that during the term of this Lease the use of any Unit is requisitioned or taken by any governmental authority by condemnation or otherwise for a definite period which does not exceed the then remaining term of this Lease or for an indefinite period, the Lessee's obligation to pay rent shall continue for the duration of such requisitioning or taking. The Lessor shall be entitled to receive and retain for the account of the Lessee all sums payable for any such period by such governmental authority as compensation for requisitioning or taking of possession to an amount equal to the rent paid or payable hereunder for such period, and the balance, if any, shall be payable to and retained by the Lessor as its sole property.

Section 7. Reports. In each calendar year during the continuance of this Lease, commencing in 1976, the Lessee will furnish to the Lessor, the C&S and the Trustee an accurate statement (a) setting forth the amount, description and numbers of all Units then leased hereunder and covered by the Trust, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding twelve months (or since the date of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Lessor, the C&S or the Trustee may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by Section 4 hereof and Section 4.6 of the Trust have been preserved or replaced. The Lessor shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

Section 8. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have, under the provisions of Section 8 of the First Lease.

The Lessee's delivery of a Certificate of Delivery shall be conclusive evidence as between the Lessee and the Lessor that all Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor, the C&S and the Trustee, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration of any Unit, or in the event that any equipment or appliance is required to be installed on any such Unit in order to comply with such laws or rules, the Lessee will make such alterations, changes, replacements and additions at its own expense; provided, however, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor, the C&S or the Trustee adversely affect the property or rights of the Lessor, the C&S or the Trustee under this Lease, the First Lease or under the Trust.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit in good order and repair.

Any and all additions to any Unit (except, in the case of any Unit which is a locomotive, communications, signal and automatic control equipment or devices having a similar use which have been added to such Unit by the Lessee. the cost of which is not included in the Cost of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body), and any and all parts installed on and additions and replacements made to any Unit shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Trust, the First Lease or this Lease) shall immediately be vested in the Lessor, the C&S and the Trustee as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify, protect and hold harmless the Lessor, the C&S and the Trustee from and against all losses, damages, injuries, liabilities, claims and demands whatsoever (including without limitation, claims based on strict liability in tort), regardless of the cause thereof, and ex-

penses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in Section 15 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor with a copy to the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the C&S or the Trustee of the Units or the leasing thereof to the Lessee by the Lessor. In the event that the Lessor is required to file any income tax return in any state or locality with respect to items of income, deductions and credits attributable to the Units or the rentals hereunder, the Lessee, to the extent reasonably requested by the Lessor shall furnish to the Lessor in connection with such filing, such information as is then available to the Lessee from its books and records.

Section 9. Default. If, during the continuance of this Lease, one or more of the following events (each such event being hereinafter sometimes called an Event of Default) shall occur:

(a) the Lessee shall default in the payment of any part of the rental payable hereunder for more than 30 days after the same shall have become due and payable; or

(b) the Lessee shall make or suffer any unauthorized assignment or transfer of its rights hereunder (not within the purview of clause (d) or (e) of this paragraph) or shall make any unauthorized transfer or sublease of (including, for the purpose of this clause, any contract for the use of) any of the Units or, except as herein authorized, shall part with the possession of any of the Units, and shall fail or refuse either to cause such assignment or transfer or sublease to be cancelled by agreement of all parties having any interest therein and recover possession of such Units within 30 days after the Lessor shall have demanded in writing such cancellation and recovery of possession, or within said 30 days to deposit with the Lessor a sum in cash equal to the Fair Value (as defined in the Trust) as of the date of such

unauthorized action, of the Units so assigned or transferred or subleased or the possession of which shall have been parted with otherwise than as herein authorized (any sum so deposited to be returned to the Lessee upon the cancellation of such assignment, transfer or sublease and the recovery of possession by the Lessor of such Units); or

(c) the Lessee shall, for more than 90 days after the Lessor shall have demanded in writing performance thereof, fail or refuse to comply with any other of the terms and covenants hereof on its part to be kept and performed, or to make provisions satisfactory to the Lessor for such compliance; or

(d) any proceeding shall be commenced by or against the Lessor for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extension (other than a law which does not permit any readjustment of the obligations of the Lessor hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessor under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessor, or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then, in any such case (herein sometimes called an event of default), the Lessor in its discretion may, by notice in writing delivered to the Lessee, declare to be due and payable forthwith the entire amount of the rentals payable by the Lessee and not theretofore paid. Thereupon the entire amount of such rentals shall forthwith become and shall be due and payable immediately without further demand, together with interest at the Penalty Rate, to the extent legally enforceable, on any portion thereof overdue; and the Trustee shall be entitled to recover judgment for the total amount so becoming payable by the Lessee together with interest thereon at the rate specified in Section 16 hereof to the extent legally enforceable.

In the case of the happening of any event of default, the Lessor may by its agents enter upon the premises where any of the Units may be located and take possession of all or any

part of the Units and withdraw the same from said premises, retaining all payments which up to that time may have been made on account of rental for the Units and otherwise, and shall be entitled to collect, receive and retain all unpaid per diem, mileage or other charges of any kind earned by the Units or any part thereof, and may lease the Units or any part thereof, with or without retaking possession thereof (but only after declaring due and payable the entire amount of rentals payable by the Lessor hereunder) may sell the same or any part thereof, free from any and all claims of the Lessee at law or in equity, in one lot and as an entirety or in separate lots, insofar as may be necessary to perform and fulfill the trust hereunder, at public or private sale, for cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights hereunder in the manner herein provided. Upon any such sale, the Lessor itself may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Lessor may specify, or as may be required by law, and without gathering at the place of sale the Units to be sold, and in general in such manner as the Lessor may determine, but so that the Lessee may and shall have a reasonable opportunity to bid at any such sale. Upon such taking possession or withdrawal or lease or sale of the Units, the Lessee shall cease to have any rights or remedies in respect of the Units hereunder, but all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Lessee, and no payments theretofore made by the Lessee for the rent or use of the Units shall, in case of the happening of any event of default and such taking possession, withdrawal, lease or sale by the Lessor, give to the Lessee any legal or equitable interest or title in or to the Units or any of it or any cause or right of action at law or in equity in respect of the Units against the Lessor. No such taking possession, withdrawal, lease or sale of the Units shall be a bar to the recovery by the Lessor from the Lessee of rentals then or thereafter due and payable, and the Lessee shall be and remain liable for the same until such sums shall have been realized as, with the proceeds of the lease or sale of the Units, shall be sufficient for the discharge and payment in full by the Lessor of all the items mentioned in Section 4.4 of the Trust (other than dividends or interest not then accrued), whether or not they shall have then matured.

The Lessor shall also have the right to recover from the Lessee an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States of America or any political subdivision thereof, shall, in the reasonable opinion of the Lessor, cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the investment tax credit lost or recaptured as a result of the sale or other disposition of the Lessor's interest in any unit after the occurrence of an event of default.

After all such payments shall have been made in full, the title to any of the Units remaining unsold shall be conveyed to the Lessee free from any further liabilities or obligations to the Lessor hereunder. If after applying all such sums of money realized by the Lessor as aforesaid there shall remain any amount due to the Lessor under the provisions hereof, the Lessee agrees to pay the amount of such deficit to the Lessor. If after applying as aforesaid the sums of money realized by the Lessor there shall remain a surplus in the possession of the Lessor, such surplus shall be paid to the Lessee.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

Section 10. Return of Units Upon Default. If this Lease shall terminate pursuant to Section 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith place such Units upon such storage tracks of the Lessee or the C&S as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor, the C&S or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

Section 11. Assignments; Possession and Use. This Lease and the rentals and other sums due hereunder shall not be assignable by the Lessor.

So long as the Lessee shall not be in default under this Lease or under the Trust in its capacity as Guarantor or otherwise, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Trust, but, without the prior written consent of the Lessor and the Trustee, which shall not be unreasonably withheld, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor, the C&S or the Trustee not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the C&S, the Trustee or the Lessee therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph. No assignment or sublease entered into by the Lessee hereunder shall relieve the Lessee of any liability or obligation hereunder which shall be and remain those of a principal and not an agent.

So long as the Lessee shall not be in default under this Lease or under the Trust in its capacity as Guarantor or otherwise, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease, the First Lease and the Trust; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this Section 11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Trust) into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all of the lines of railroad of the Lessee, provided that such assignee or transferee will not, upon the effectiveness of such merger or consolidation, be in default under any provisions of this Lease.

Section 12. Return of Units Upon Expiration of Term. As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor, in good order and running condition, normal wear and tear excepted, upon such storage tracks of the Lessee or of the C&S as the Lessee may designate, or, in the absence of such designation, as the Lessor may select, the movement and storage of such Unit to be at the expense and risk of the Lessee. The assembling, delivery and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written

notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; provided, however, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to Section 6 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence while this Lease is in effect.

Section 13. Opinion of Counsel. Within ten days after execution of this Lease the Lessee will deliver to the Lessor, two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor in scope and substance satisfactory to the Lessor and its counsel, to the effect that:

A. the lessee is a corporation legally incorporated, validly existing and in good standing under the laws of its state of incorporation (specifying the same) with adequate corporate power to enter into the Trust and this Lease;

B. the Trust and this Lease have been duly authorized, executed and delivered by the Lessee and constitute valid, legal and binding agreements of the Lessee, enforceable in accordance with their respective terms;

C. the Trust and this Lease have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recordation will protect the Trustee's, the C&S's and the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of the Trustee, the C&S or the Lessor in and to the Units;

D. no consent, approval or filing is required from any public regulatory body with respect to the entering into or performance of the Trust or this Lease or, if such consent, approval or filing is required, the same has been obtained;

E. the entering into and performance of the Trust or this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Trustee's, the C&S's or Lessor's respective interests therein; provided, however, that such liens may attach to the rights of the Lessee hereunder in and to the Units.

Section 14. Recording; Expenses. The Lessee will at its own expense cause this Lease, the First Lease and the Trust to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the C&S under the Trust and the Lessor under the First Lease, and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor, the C&S or the Trustee for the purpose of proper protection, to their satisfaction, of the Trustee's, the C&S's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the First Lease or the Trust; and the Lessee will promptly furnish to the Trustee, the C&S and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Trustee, the C&S and the Lessor. This Lease, the First Lease and the Trust shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

The Lessee will pay the reasonable costs and expenses involved in the preparation and printing of this Lease and the Trust, and the costs and expenses of financing (including legal, money placement and agent fees). The Lessor and the Lessee will each bear the respective fees and disbursements, if any, of their respective counsel.

Section 15. Federal Income Taxes. The Lessor, due to an election by the C&S pursuant to Sections 38 and 48(d) of the Federal Internal Revenue Code of 1954 as amended, shall be entitled to the Investment Tax Credit.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and execute such

documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. Lessee agrees to keep and make available for inspection and copying by Lessor such records as will enable Lessor to determine whether it is entitled to the full benefit of the Investment Credit, with respect to the Units.

The Lessee's and the Lessor's agreement to pay any sums which may become payable pursuant to this Section 15 shall survive the expiration of other termination of this Lease.

This Lease may be terminated upon 30 days' written notice (hereinafter called a "Notice of Termination") to the Lessee, the C&S and the Trustee by the Lessor, or to the Lessor, the C&S and the Trustee by the Lessee, if the Lessee is unable to obtain by November 1, 1975, or if prior to November 1, 1975, the Lessee is advised by the Internal Revenue Service that it will not receive a ruling from the Internal Revenue Service to the effect that (i) this Lease is a lease for federal tax purposes, (ii) the Lessor is the Lessor and the Lessee is the Lessee under the Lease; (iii) the Units constitute "Section 38 Property" with respect to which C&S is entitled to claim the Investment Credit in respect of the full purchase price of the Units and (iv) the C&S can make a valid election pursuant to Section 48(d) of the Code to treat Lessor as having acquired such property for an amount equal to its fair market value for purposes of the credit allowed by Section 38.

The Lessee agrees that it will apply for and diligently seek a favorable ruling from the Internal Revenue Service. The Lessor and the C&S shall have the right to review the request for ruling and participate in seeking such ruling if the Lessor or the C&S desires.

The Lessee represents that any operation and maintenance of the Units outside of the United States shall be insignificant. If the Internal Revenue Service requires the Lessor to allocate its income from this Lease between domestic and foreign usage of the Units, the Lessee shall indemnify the Lessor and hold it harmless against any loss of foreign tax credits for United States income tax purposes, resulting from such foreign usage.

Section 16. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, interest at the rate of one percent (1%) over the dividend rate described in the Trust, on overdue rentals for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

**Section 17. Notices.** Any notice required or permitted to be given by either party hereto to the others shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, WEHCO Leasing Company, c/o Walter E. Heller Co., 105 West Adams. Chicago, Illinois 60690, Attention: Mr. Sam Eichenfield, Vice President

(b) if to the Lessee, Burlington Northern Inc., 176 East Fifth Street, St. Paul, Minnesota 55101, Attention: Vice President, Finance;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

**Section 18. Severability; Effect and Modification of Lease.** Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

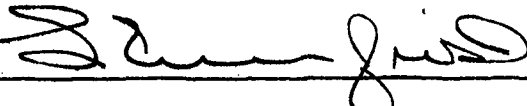
This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written with respect to the Units dated prior to execution of this Lease. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

**Section 19. Execution.** This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of November 1, 1974, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

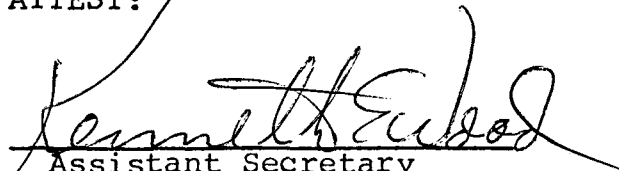
**Section 20. Law Governing.** The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have  
executed or caused this instrument to be executed as of the  
date first above written.

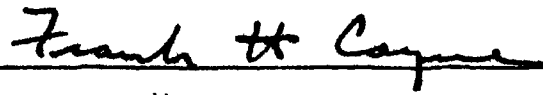
WEHCO LEASING COMPANY

By 


ATTEST:

  
Assistant Secretary

BURLINGTON NORTHERN INC.

By   
VICE PRESIDENT

ATTEST:

  
Assistant Secretary

STATE OF ILLINOIS)

) SS

COUNTY OF COOK

On this 14<sup>th</sup> day of November, 1974, before me personally appeared Samuel Eichenfield, to me personally known, who, being by me duly sworn, says that he is Vice President of WEHCO LEASING COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Auzela Matero

[Notarial Seal]

STATE OF MINNESOTA)

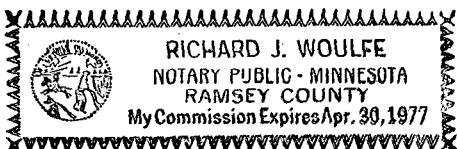
) SS

COUNTY OF RAMSEY

On this 14<sup>th</sup> day of November, 1974, before me personally appeared **FRANK H. COYNE**, to me personally known, who, being by me duly sworn, says that he is Vice President of BURLINGTON NORTHERN INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Spickard (Musk)

[Notarial Seal]



# SCHEDULE A

Number of Units	Description	Guarantor's Road Numbers	Estimated Cost
500	100-ton triple hopper cars	BN 526400-526899, both inclusive	\$10,975,000
50	Steel cabooses	BN 12000-12049, both inclusive	2,090,000
22	GP 38-2 2,000 H.P. loco- motives	BN 2088-2109, both inclusive	6,369,022